

Claimant, a 41-year old, 5-foot-11-inch, 230-pound worker, was employed by respondent as a delivery man and dock worker. Claimant would load and unload trucks, handling weights anywhere from five to several hundred pounds. On one of the alleged dates of accident, October 7, 1999, claimant was in the office talking to the operations manager, Susie Hill. Claimant was leaning on a ledge or counter. Claimant testified he straightened up, took a step backwards and experienced a sudden onset of pain in his low back. Claimant acknowledges at the time of the onset of pain he was performing no work for respondent.

Respondent's representative, Susie Hill, testified that claimant had his hands on the counter in front of her. When he stepped "forward" as she described it, he appeared to experience a sudden catch in his back and either fell or leaned into a door frame. Claimant then went to the back office and laid down for a period of time. After lying down for a brief period of time, claimant returned to his work duties and completed the work for that day. Claimant continued working for respondent through January 2, 2000.

At some time during the night of January 3, 2000, claimant awoke, experiencing pain in his back. Claimant testified that he shifted around and then went back to sleep. The next morning, January 3, 2000, claimant was unable to get out of bed. Claimant sought medical treatment on January 6, 2000, and has never returned to work for respondent.

Claimant's prior injury and medical history is significant as he underwent a right L5-S1 hemilaminectomy discectomy on December 12, 1988. Claimant advised his current treating physicians that he had suffered back problems off and on for years.

Claimant is currently diagnosed with degenerative disc disease at L4-5 and L5-S1, a herniated disc at L5-S1 nerve root to the right, with bilateral radiculopathy at L5 and S1. Medical records attached to the preliminary hearing detail both the October incident and the January incident, with the January incident being the more acute situation. Thomas J. Peters, M.D., in his report of January 6, 2000, describes claimant's condition as having grown acutely worse over the three days preceding the January 6, 2000, examination.

In workers' compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g).

K.S.A. 1999 Supp. 44-508(g) defines "burden of proof" as follows:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true and not true on the basis of the whole record.

See *also* Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

In workers' compensation litigation, three categories of risks are used to analyze work place hazards: (1) risks directly associated with a job; (2) risks which are personal to the worker; and (3) neutral risks which have no particular employment or personal character. Hensley v. Glass, 226 Kan. 256, 597 P.2d 641 (1979).

Before an injury can be said to arise out of employment, the risk must be incidental to the work. A risk is incidental to the employment when it belongs to or is connected with

what the worker has to do in filling his or her duties. Martin v. Unified School Dist. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

Personal or idiopathic injuries have been found in Kansas to be generally noncompensable. However, in Bennett v. Wichita Fence Co., 16 Kan. App. 2d 458, 824 P.2d 1001 (1992), a claimant was awarded benefits when his epilepsy caused him to black out while driving a company vehicle and hit a tree. The Court, in Bennett, explained that where an employment injury is clearly attributable to a personal condition of the employee, and no other factors intervene or operate to cause or contribute to the injury, no award is granted. However, as in Bennett, when a claimant's employment duties combine with a claimant's preexisting personal condition resulting in an injury, the claimant is placed in a position of unusual risk and the injury becomes compensable.

Here, claimant suffered injury as the result of a personal condition, with no hazard of employment involved. Claimant merely straightened up and stepped backwards from the counter when he experienced a sudden onset of pain in his back. No medical evidence has connected claimant's work to the October 7, 1999, incident. Additionally, claimant continued working for nearly three months after that incident, before the January 3, 2000, incident at his home. Those personal conditions of claimant do not constitute accidental injury arising out of and in the course of his employment with respondent.

The Appeals Board finds that claimant failed to prove that the incidents occurring on October 7, 1999, and January 3, 2000, are in any way related to his employment with respondent. Therefore, benefits should be denied.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated October 12, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 2000.

BOARD MEMBER

c: Russell B. Cranmer, Wichita, KS
D. Steven Marsh, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director